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IN THE

Supreme Court of The United States

NO. 323

OCTOBER TERM, 1962

HUGH SMITH,
Petitioner,

-vs-

STATE OF FLORIDA,
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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JURISDICTIONAL STATEMENT

By petitioner's own announcement, the judgment of the Florida Supreme Court, which he seeks to have this tribunal review, is the one issued on May 7, 1962, and found in 143 So. 2d 491, in words and figures as follows:

"SMITH

v.

STATE.

No. 31478.

Supreme Court of Florida.

May 1962.

Certiorari denied without opinion."

Considering that certiorari was denied him without opinion by the simple unequivocal notation set out above, respondent wonders how such ominous assessments can be made against said decision? Perhaps petitioner would have this Court consider that the opinion of the Supreme Court of the State of Florida in *State v. Smith*, Fla., 123 So. 2d 700 (copy of the text of which may be found in petitioner's Appendix "A"), is in fact what the court concluded in its judgment bearing date of May 7, 1962, denying petitioner certiorari (*Smith v. State*, supra). It would indeed take considerable legal magic to transpose the announced findings of the Florida Supreme Court in *State v. Smith*, supra, and make them the *sub rosa* findings of said tribunal in a per curiam decision without opinion denying certiorari some eighteen (18) months later.

Respondent notes that at no time after the Florida Supreme Court rendered its decision in *State v. Smith*, supra, did petitioner (then appellee) ever seek judicial review of that decision in this or any other court. Considering the specific pronouncements to be found in the revised rules of the Supreme Court

of the United States, to-wit: Rules 10, 11 and 22, it is apparent that the present petition comes much too late if, by its filing, petitioner seeks review of said opinion in *State v. Smith*, supra.

If in fact that is not what petitioner seeks, then why the repeated references and attachment of said opionion as Appendix "A" to his petition? It well may be that without this opinion (presently more than two years old) petitioner could not even allege any controversy.

In his statement of the case, petitioner concedes that after the Supreme Court of Florida rendered its decision in *State v. Smith*, supra, he was tried in the Criminal Court of Record in and for Dade County, Florida, and convicted of violating the pertinent provisions of *Chapter 447, Florida Statutes*, here under consideration. Petitioner further concedes that following said conviction and sentence ($200.00 fine and two years probation), he appealed said conviction to the Circuit Court in and for the Eleventh Judicial Circuit, Dade County, Florida. This was his choice and his alone. In most circumstances the appeal of a criminal conviction for a misdemeanor is appropriately taken to the circuit court in the judicial circuit involved—for in fact said circuit courts are vested with *final appellate jurisdiction* in all cases of misdemeanors arising in the criminal courts of record, the county courts, the county judge's courts, the courts of the justices of the peace and over all judgments or sentences of any municipal court. See *Section 26.53, Florida*

Statutes. See also *Pleger v. State*, Fla., 68 So. 2d 371. However, when constitutional (state or federal) questions have been or are raised by a given accused at or during the course of his trial of said misdemeanor, and he is convicted thereunder, the appeal from said conviction should be taken within 90 days after said sentence is entered (see *Florida Appellate Rule 6.2*) *to the Florida Supreme Court* (See *Article V, Section 4, Florida Constitution* and *Florida Appellate Rule 2.1.(5) (a)*). Certainly petitioner cannot quarrel with the proposition that said rules were in existence and applicable to him at the time in question. Their pronouncements are not in any sense obtuse or enigmatic. In point of fact, they are simply terse, basic English pronouncements by which all litigants should govern themselves with reference to state appellate procedure.

When the Circuit Court of Dade County, to which petitioner appealed, concluded that his conviction should be affirmed, it exercised its statutory prerogative of final appellate jurisdiction. See *Section 26.53, Florida Statutes*. Respondent does not suggest that there was no tribunal to which petitioner could then go to seek further review other than to say that if he genuinely felt himself aggrieved, the course which a petition for certiorari (to the Dade County Circuit Court) should have taken was one directed to the appropriate district court of appeal. See *Ramagli Realty Company v. Craver*, Fla., 121 So. 2d 648 and 123 So. 2d 404.

Needless to say, petitioner did not feel constrained to go to the appropriate court for his review but elected instead to seek the extremely limited review of the Florida Supreme Court by petitioning for certiorari to said court. *There is simply no existing means whereby certiorari may be taken from a circuit court (sitting as an appellate court, as was the case here) to the Florida Supreme Court. Article V, Section 4 of the Florida Constitution* clearly and carefully delineates the extremely limited circumstances in which the Florida Supreme Court may be petitioned to review by certiorari decisions of the appellate courts. This is limited exclusively to decisions of the three existing district courts of appeal. No other tribunals are within that pale.

It thus appears that petitioner, by his own choice, elected to seek appellate review in the Circuit Court for Dade County. It further appears that when that appellate review terminated adversely to him, he did not seek the old "common law" certiorari in the District Court of Appeal in and for the Third District but chose instead to seek review by certiorari in a court which, by constitutional provision, simply had no jurisdiction pursuant to which it could have granted such review even if it were so inclined.

Nor can it be said that by ultimately filing a petition for writ of certiorari in a court which simply did not have jurisdiction to grant same (the Florida Supreme Court), that said court should have considered that petition for writ of certiorari as an appeal whereupon it could have proceeded to determine what review, if any, was indicated. In the case of *Daisey v. State*, Fla., 113 So. 2d 700, the Supreme Court of Florida con-

cluded that certiorari was not the proper method of obtaining review of a circuit court's decision affirming the petitioner's conviction, in the Dade County Metropolitan Court of certain traffic violations even though constitutional issues were raised.

Certainly more to the point, is the decision of the Supreme Court of Florida in the case of *Engle v. City of North Miami*, Fla., 115 So. 2d 1, wherein said court concluded unequivocally that a petition for certiorari could not and would not be considered as a notice of appeal in order to accomplish or secure appellate review.

This substantially conforms to a longstanding policy adhered to by this very Court and, respondent respectfully submits, is no departure whatever from the well-ordered concepts of due process to say nothing of the absolute right vested by the Florida Constitution in its highest court to determine the latitude of its jurisdiction.

It thus conclusively appears that when petitioner had the free option to assail the correctness of the judgment of the Florida Supreme Court in *State v. Smith*, supra, he did nothing save and except permit time to pass—so much time that he is now precluded from having that judgment reviewed.

When he could have brought his appeal directly to the Florida Supreme Court he elected instead to bring it in the

Dade County Circuit Court. That choice was his and his alone. In that decision no one connected in any way with the State of Florida had a hand.

After the appellate court of his own choosing determined that his conviction was lawfully secured, petitioner, again exercising his free choice, did not seek review by certiorari to the appropriate district court of appeal but elected instead to seek it in a court (the Florida Supreme Court) which was powerless to grant it.

During this entire appellate chain, it is at least abundantly clear that all the choices were made by petitioner and no one else. Despite the several options of judicial review open to him, it appears that he cavalierly rejected them all and embarked instead on an appellate course calculated to strip him of the very appellate review he now insists was his due. Considering that all these choices were made by him, knowing full well that to do so might result in the very situation in which he presently finds himself, this Court is respectfully urged to find that his and only his folly or disregard of the clear guide lines referred to above is responsible therefor. So having found, and respondent is confident that such a conclusion must be reached by this Court, the action of the Florida Supreme Court in denying the petition for writ of certiorari in *Smith v. State*, supra, was simply a judicial acknowledgment of an abject lack of jurisdiction. That being so, and surely it is, it must follow, as the night the day, that the petition for writ of certiorari here sought, should and must be denied for the reason that it is shrouded in such jurisdictional deficiencies as would negative

any intelligent attempt to cloak it with appropriate appellate raiment.

This Court has consistently held that it is essential to show that not only must the state court's decision rest on a federal question, but it must also appear that a decision as to such question was necessary to the state court's determination. *De Saussure v. Gaillard*, 127 U.S. 216, 8 S.Ct. 1053, 32 L.Ed. 125 and *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 55 S.Ct. 16, 79 L.Ed. 191. See also annotations in 100 L.Ed. 1200, 1203 and 84 L.Ed. 925, 935, et seq.

Quite apart from the fact that the decision of the Supreme Court of the State of Florida denying petitioner review by certiorari in nowise turned on or was concerned with either a federal question or an issue of federally assured due process, even if it had been so colored, it is axiomatic that this would not *per se* constitute a valid basis upon which petitioner could now complain. In this regard, the Court's attention is invited to its own pronouncements anent this matter. *Pierce v. Somerset Railway*, 171 U.S. 641, 19 S.Ct. 64, 43 L.Ed. 316; *Leonard v. Vicksburg, Shreveport and Pacific Railroad Company*, 198 U.S. 416, 25 S.Ct. 750, 49 L.Ed. 1108; *Utley v. City of St. Petersburg*, Florida, 292 U.S. 106, 54 S.Ct. 593, 78 L.Ed. 1155; *Lynch v. New York ex rel. Pierson*, supra; *Brooks v. Missouri*, 124 U.S. 394, 8 S.Ct. 443, 31 L.Ed. 454; *Buck v. California*, 343 U.S. 99, 72 S.Ct. 502, 96 L.Ed. 775. See also annotations, 100 L.Ed. 1200, 1203-6; 84 L.Ed. 925, 940, et seq.

Moreover, this Court has indicated that it will decline to

review decisions of state courts where it appears that the person complaining of an alleged violation of some right under the Federal Constitution has by his own acts or omission to act waived such right. *Pierce v. Somerset Railway*, supra; *Leonard v. Vicksburg, Shreveport and Pacific Railroad Company*, supra. This is particularly true where a person has either failed to avail himself or ignored the remedies available under the very statute which he claims is objectionable. *Utley v. City of St. Petersburg*, Florida, supra.

The basic pronouncements to be found in the immediately aforementioned decisions of this Court were brought forth and coalesced in the realm of criminal law by this Court's own recent decision in the case of *Durley v. Mayo*, 351 U.S. 277, 100 L.Ed. 1178, 76 S.Ct. 806, in which it concluded that the Florida Supreme Court, in denying the petitioner relief by habeas corpus, rested its decision on adequate state grounds; they being respectively statutory *res adjudicata* (*Section 79.10, Florida Statutes*) and substantive or case law *res adjudicata* (*Washington v. Mayo*, Fla., 77 So. 2d 620, 621).

That either or both of the bases for the application of that doctrine by the Supreme Court of Florida was an adequate state ground in this Court's view needs no further saying.

In the instant proceedings, we are concerned neither with a statutory pronouncement nor with some case law interpreta-

tion of a principle of state law, but rather with the undeniable fact that the Supreme Court of Florida simply did not have jurisdiction to grant review by certiorari to petitioner.

Nor need this Court consider that the Supreme Court of Florida might have rested its order of dismissal on an adequate state ground, as was the case in *Durley v. Mayo*, supra. It may be categorically stated and respondent so does, that the order of the Supreme Court of Florida in question was in fact founded upon state grounds which are conclusively adequate.

RESPONSE ON THE MERITS

Section 447.04, Florida Statutes, as it presently exists, does not infringe upon the *National Labor Relations Act* for the reason that such statute presently applies to the activities of a "business agent" of a labor organization which activities are not related to collective bargaining rights under the *National Labor Relations Act* and due to the fact that the *National Labor Relations Act* as modified by the *Labor-Management Reporting and Disclosure Act of 1959*, 73 *Statutes* 519, recognizes the right of the State to impose restrictions upon union officers such as are contained in *Section 447.04*, supra.

When the constitutionality of *Section 447.04*, supra, was first considered by the Florida Supreme Court in *Hill v. State*, 155 Fla. 245, 19 So. 2d 857, it was held to be constitutional after deleting therefrom a provision granting arbitrary power to the board created thereunder. That decision in *Hill v. State*, supra, was reversed by this Court on the ground that the Florida statute conflicted with the *National Labor Relations Act* and

the case was remanded for further proceedings. *Hill v. Florida*, 65 S.Ct. 11, 326 U.S. 804, 90 L.Ed. 489.

The only announced basis upon which this Court reversed the judgment of the Florida Supreme Court in *Hill v. State*, supra, was that if said statute were applied so as to restrict the freedom of workers in the selection of their collective bargaining representatives it would and to that extent alone, conflict with the *National Labor Relations Act*. Assuming that the condemned portion under *Hill v. Florida*, would be removed so that it no longer collided with the *National Labor Relations Act*, the aforesaid section is and would be constitutional under the decision of the Florida Supreme Court in *Hill v. State*, supra, as modified by the decision of this Court in *Hill v. Florida*, supra.

Bearing this in mind, it is apparent that said position was accepted by the Florida Supreme Court in *Hill v. State*, supra, for on remand of that case from this Court to the Florida Supreme Court, said court entered an order of reversal on November 29, 1945, which order removed the portions of the section found offensive by this Court but in all other respects its judgment stood as amended.

Thus it appears that the aforesaid section has been and is presently interpreted as to have no application to bargaining representatives of unions but rather a simple application to activities or functions of a "business agent" bearing no relation to collective bargaining. So viewed, it is submitted that *Section 447.04*, supra, as ultimately interpreted and applied by the Florida Supreme Court, is not subject to the condemnation visited upon it in *Hill v. Florida*, supra.

By the passage of the *Labor-Management Reporting and Disclosure Act*, 73 *Statutes 519*, the *National Labor Relations Act* has been modified in certain particulars. Said modification evidenced a clear intention on the part of Congress not to preempt the field of public relations here involved eg. the licensing and qualification of officers or paid representatives of unions.

In other words, it is the respondent's position that the *Labor-Management Reporting and Disclosure Act* has so spelled out the intention of Congress in this area that the rationale of *Hill v. Florida*, supra, no longer has any valid application to *Section 447.04*, supra.

The purpose of said modifying legislation was to correct or eliminate certain improper practices which Congress found to exist in certain labor unions. See *29 U.S.C.A., Section 401*. Pursuant to the aforesaid, certain means were utilized to effectuate the purposes outlined in the aforesaid section of the code. *29 U.S.C.A., Section 504*.

The effect of the *Labor-Management Reporting and Disclosure Act* upon the *National Labor Relations Act* and the decision of this Court in *Hill v. Florida*, were considered by this Court in the case of *De Veau v. Braisted*, 363 U.S. 144, 4 L.Ed. 2d 1109, 80 S.Ct. 1146.

The cited case was an appeal from the Court of Appeals of New York upholding the constitutionality of an act making it a crime for any person to solicit, collect or receive dues on behalf of any labor organization if any officer or agent of such

organization has been convicted of a felony unless such officer had been subsequently pardoned therefor by the appropriate authority of the state or jurisdiction when such conviction was had or unless such person received a certificate of good conduct from the Board of Parole to remove the disability.

This Court reviewed investigations conducted of the conditions existing on the waterfront in the states of New York and New Jersey which resulted in the two states entering into a compact designed to create a commission with authority to ameliorate such conditions. Such compact was approved by Congress. The statute in question was not submitted as part of the compact but constituted supplementary legislation adopted to carry out the objectives of such compact.

This Court rejected the argument that the decision in *Hill v. Florida*, supra, was authority for the proposition that there was a conflict between this statute and the *National Labor Relations Act* in contravention of the supremacy clause of the *Constitution of the United States*.

It might be argued that there were two distinguishing features between *Section 447.04, Florida Statutes*, and the New York statute involved in the *De Veau* case, supra, viz: the New York statute merely made it a crime for certain persons to solicit dues on behalf of an organization which had as an officer thereof a person who had been previously convicted of a felony and such legislation was enacted pursuant to a compact which had been approved by Congress.

With regard to the first point mentioned above, it is submitted that it is clear that there is very little distinction between prohibiting certain persons from acting on behalf of a union with violations thereof being made subject to criminal sanctions and requiring that certain labor union representatives obtain a license prior to engaging in certain union activities with violations thereof being made subject to criminal sanctions. In either case, the object of the legislation is to insure that a certain designated class of persons do not obtain control of the activities of labor organizations within a state. In both instances, the legislation would prohibit certain persons whose background and previous activities would make it appear that their participation in positions of responsibility in the labor union movement would be inimical to the best interest of the labor union, its individual members and the general public.

With regard to the second point mentioned above, it is submitted that the proper perspective to be given to the compact which was considered by this Court in the *De Veau* case, supra, is that it was evidence of the fact that provisions such as were involved in that case and in the instant case do not conflict with the *National Labor Relations Act*. To hold otherwise would require a finding that the states of New York and New Jersey, having received special permission from the Congress of the United States, may undertake to regulate certain areas conceivably within the scope of the *National Labor Relations Act* whereas the other 48 states in the Union would not have authority to regulate such activities without first obtaining the special consent of Congress to do so.

Finally, with regard to both of the contentions discussed above, it is submitted that the *De Veau* case, supra, clearly indicates that the adoption of the *Labor-Management Reporting and Disclosure Act* by Congress constituted an expression on the part of Congress that no pre-emption of the states authority to regulate or prohibit certain persons from representing labor unions in order to insure against corruption in such unions was intended.

In view of the above, it is submitted that *Section 447.04, Florida Statutes*, does not conflict with the *National Labor Relations Act, 29 U.S.C.A., Section 151*, et seq., as modified by the *Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A., Section 401*, et seq.; and that, therefore, such statute is not rendered unconstitutional by operation of the supremacy clause to the *Constitution of the United States*.

Petitioner next contends that this Court's jurisdiction should be invoked because a failure to do so would in effect constitute an undue restraint upon his enjoyment of his constitutional rights to the freedoms of speech and assemblage. Such a contention should not properly be lodged in this case, as will be demonstrated post.

That precise question was presented to and considered by the Florida Supreme Court in *Hill v. State*, supra, wherein it held that *Section 447.04*, supra, did not violate any constitutional rights to the freedoms of speech or assemblage. When that

decision was reversed by this Court in *Hill v. Florida*, supra, this Court did not see fit to comment upon or in any way disturb or modify the specific findings of the Florida Supreme Court that the aforesaid section did not offend or collide with these constitutional rights.

In the case of *Thomas v. Collins*, 323 U.S. 516, 89 L.Ed. 430, this Court considered and struck down a statutory provision enacted by the State of Texas which would require that representatives from National Labor Unions register with the State of Texas prior to undertaking speaking engagements in that state. Insofar as the statute would require the registration of labor union officials in the State of Texas, whose only activity in the state would be to speak at meetings, it was held unconstitutional. The court said:

> ". . . If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.
> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context, such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said

the state might regulate, in Schneider v. Irvington, 308 U.S. 147, 84 L ed 155, 60 S Ct 146, and Cantwell v. Connecticut, 310 US 296, 84 L ed 1213, 60 S Ct 900, 128 ALR 1352, both supra. That however must be *done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly. . . .

It is clear that the statute involved in the instant case would have no application to a labor union official coming into this state for the sole purpose of making a speech. Rather, this statute applies only to business agents who undertake to act for a labor organization in the performance of functions such as a collection of funds, securing subscriptions, making work assignments and other activities which might be undertaken on the part of a business agent for a labor organization which would have no relation to their function as collective bargaining agents for such labor organization.

The statute in question, then, clearly seeks to regulate activities within the realm where the state may impose reasonable registration or identification requirements without intruding upon the rights to freedom of speech and freedom of assemblage guaranteed by the *Constitution of the United States.*

Petitioner would seek to gain substantial comfort from the case of *Staub v. Baxley*, 355 U.S. 313, 2 L. Ed. 2d 302, 78 S. Ct. 277. Respondent feels that this as well is ill-sought. The

case of *Staub v. Baxley*, supra, is essentially nothing other than a restatement by this Court of the law established in *Thomas v. Collins*, supra. This Court, in outlining the provisions of the ordinance under consideration in the *Staub* case, supra, said:

> "This ordinance in its broad sweep makes it an offense to 'solicit' citizens of the City of Baxley to become members of any 'organization, union or society' which requires 'fees (or) dues' from its members without first applying for and receiving from the Mayor and Council of the City a 'permit' (Sections I and II) which they may grant or refuse to grant (Section V) after considering 'the character of the applicant, the nature of the . . . organization for which members are desired to be solicited, and its effects upon the general welfare of (the) citizens of the City of Baxley' (Section IV)."

In holding this ordinance unconstitutional, the court discussed the "undeniable facts" that the ordinance did not contain any "semblance of definitive standards or other controlling guides" but, rather, gave the designated city officials authority "to grant 'or refuse to grant' the required permit in their uncontrolled discretion." Under such circumstances, the statute was held to be in violation of the First Amendment to the Constitution. In both the *Thomas* case, supra, and the *Staub* case, supra, the statutes or ordinances attacked were applied so as to prohibit the exercise by individuals of their right to speak in behalf of a labor organization at meetings or in prospective members' private homes with no further activity being undertaken by the speaker.

The Florida statute under attack here could not possibly

be given the application attempted in the *Thomas* and *Staub* cases, supra. Rather the Florida statute clearly comes within the area where reasonable requirements may be imposed without violating the provisions of the First Amendment. The petitioner, furthermore, does not contend that such an interpretation of the Florida statute could or should be made. Rather, he has presented a modified version of the argument that labor organizations have been making for many years which is to the effect that labor unions are no different from religious, fraternal and charitable organizations and should be entitled to enjoy the same privileges and immunities as such organizations receive. To this writer's knowledge, such argument has never been embraced by any court. The economic power and wealth of labor organizations is something which is so widely known that it is submitted that this Court could certainly take judicial knowledge thereof. Those facts, together with the much publicized and recently much investigated ability of a labor organization when it falls into the control of persons not "of good moral character" to do immense harm not only economically but physically as well to citizens of this country and to the citizens of the State of Florida, adequately shows the fallacy inherent in that analogy. Respondent is not aware of any case which lends any credence to this argument so long as the regulation attempted requires that something other or, in addition to speaking on behalf of a cause be required before the regulations are imposed.

Inasmuch as the Florida statute does not attempt to regulate within the areas condemned by this Court in the *Thomas* and *Staub* cases, supra, it is submitted that no area of conflict be-

tween such statute and the First Amendment has been demonstrated by petitioner.

It therefore follows that even when viewed in light of petitioner's suggested infirmities, no deficiencies, much less any clothed with a deprivation of due process, can legitimately be said to spring from the legislation in question or the prosecution brought thereunder.

Petitioner would have the Court believe critical information was not furnished him within the framework of the charge to be found in the information in question. It would seem to follow that because of it he was quite, if indeed not totally, unable to properly defend against such a charge.

Respondent respectfully submits that the information plainly and in very ordinary language charged petitioner with acting as a business agent of a labor union in Dade County, Florida, between January 19, 1960, and March 25, 1960, without having a license or permit to act as such business agent issued to him pursuant to the provisions of *Chapter 447, Florida Statutes.*

Indictments or informations charging the accused with committing a specified offense at divers times between two dates or at some time between two dates, sufficiently allege the date of the offense under the rule requiring the date of the offense to be alleged with definiteness and certainty so long as such dates are within the period of limitation. *Collier v. State*, 116

Fla. 703, 156 So. 703, cert den 55 S.Ct. 237, 293 U.S. 622, 79 L. Ed. 709; *Overstreet v. Whiddon*, 130 Fla. 231, 177 So. 701; *Gerald v. State*, 135 Fla. 736, 185 So. 873.

The information alleges that the petitioner committed the offenses charged in Dade County, Florida, and, therefore, the necessary statement of place of venue is contained in such information.

The labor union which the petitioner was charged with acting as a business agent for was identified with particularity with both the name and the local union number of the union being alleged.

It is submitted that the information filed in the trial court stated the charge against petitioner with such clearness and certainty as to apprise him of the charge he would be called on to meet at the trial and that such information was therefore, quite sufficient.

CONCLUSION

The Supreme Court of the State of Florida, in denying petitioner the writ of certiorari which he sought, simply exercised its free judicial right, nay duty to determine that it did not have jurisdiction to entertain the petition in question. In this regard, it is respectfully submitted that the action of said court neither is nor should be subject to question. It is perhaps the most compelling of adequate state grounds which this writer can envision. As such, it poses a legal barrier to

further judicial review by this Court based upon a host of sound pronouncements culminating in *Durley* v. *Mayo*, supra. Quite apart from the aforesaid, respondent is resolute in his position that the merits of petitioner's claim when viewed in light of the authorities set out above and the obvious factors taken into consideration by the Florida Supreme Court and this Court in arriving at said conclusions, are signally deficient in at least several material particulars—to such an extent that the only course this Court should follow in disposing of the petition presently being considered is one calculated to produce its order of denial.

Respectfully submitted

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GEORGE R. GEORGIEFF
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Counsel for the Respondent.

PROOF OF SERVICE

This is to certify that I have forwarded a copy of the foregoing Response to petition for writ of certiorari to the Supreme Court of the State of Florida to the Honorable Herbert S. Thatcher, 1009 Tower Building, Washington 5, D.C., counsel for the petitioner, by mail, this day of November, 1962.

GEORGE R. GEORGIEFF
Assistant Attorney General
Of Counsel for the Respondent